IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-06-2009

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA

AND

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

WRIT PETITION Nos.30664 OF 2006 AND 17126 to 17128 OF 2008
W.P.No.30664/2006 :

B.N.Devadas ... Petitioner

-vs-

1.University Grants Commission,
rep.by its Secretary,
Bahadurshah Zafar Marg,
New Delhi-2.

2.All India Council for Technical Education,
rep.by its Director,
Shastri Bhavan,
26, Haddows Road,
Chennai-600 034.

3.The Distance Education Council,
rep.by its Director,
Maidan Garhi,
New Delhi-110 068.

4.The Secretary to Government,
Higher Education Department,
Fort St.George,
Secretariat,
Chennai-600 009.

5.The Director of College Education,
D.P.I.College Road,
Chennai-600 006.

6.Anna University,
rep.by its Registrar,
Sardar Patel Road,
Guindy,
Chennai-600 025.

7.National Council for Technical Education,
rep.by its Regional Director,
1st Floor, CSD Buildings,
H.M.T.Road,
Bangalore.

8.Bar Council of India,
rep.by its Secretary,
21, House Avenue,
Institutional Area,
New Delhi-2.

9.The Secretary to the Visitor,
ICFAI University,
Raj Bhavan,
Uttaranchal,
Dehradun-248 006.

10.Institute of Chartered Financial Analysts of India
(ICFAI) Society,
rep.by its Secretary, Headquarters,
52, Nagarjuna Hills,
Panjagutta, Hyderabad-500 082.

11.ICFAI University,
rep.by its Registrar,
C-103, Indira Nagar,
Dehradun-248 006,
Uttaranchal State.

12.The Institute of Chartered Financial Analysts of India
University, Tripura (UT),
having its Headquarters at Jagannath Bai Road,
Bidurhata Chowmuhani,
Agartala, Tripura (West),
Tripura □ 799 001,
rep.by its Registrar/Authorised Representative
Shri V.R.Shankara.

13.Anand K.Gosalia
14.Abhishek Rathi
15.Girish Sharma
16.Suneet Tulsiyan
17.K.S.S.Krishnan. ... Respondents

W.P.Nos.17126 TO 17128/2008 :

Institute of Chartered Financial
Analysts of India (ICFAI) ... Petitioner

-vs-

All India Council for Technical Education,
7th Floor, Chander Lok Building,
Janpath,
New Delhi-110 001,
rep.by its Member Secretary ... Respondent

Petitions under Articles 226 of the Constitution of India.

W.P.No.30664/2006 :

For petitioner : Mr.P.Jayaraman,
Senior Counsel,
for Mr.Syed Basheer Ahmed.

For respondent 1: Mr.R.Krishnamoorthy,
Senior Counsel,
for Mr.P.R.Gopinath.

For respondent 2: Mr.N.Muralikumaran
For respondent 3: Mr.D.Krishnakumar
For respondent 4 & 5 : Mr.S.Rajasekar
For respondent 6 : M/s.G.R.Mani Associates
For respondent 8 : Mr.K.Venkatakrishnan
For respondent 10 : Mr.A.L.Somayajee,
Senior Counsel,
for Mr.V.Perumal.

For respondent 11 : Mr.Vijayanarayanan,
Senior Counsel,
for Mr.R.Parthiban.

For respondent 12 : Mr.A.S.Balaji

For respondents 13 to 17 : Mr.Arvind P.Datar

W.P.Nos.17126 to 17128/2008 :

For petitioner : Mr.Vijayanarayanan,
Senior Counsel,
for Mr.R.Parthiban.

For respondent : Mr.N.Muralikumaran.

O R D E R

V.DHANAPALAN,J.

W.P.No.30664 of 2006 has been filed as a pro bono publico for issuance of a writ of mandamus, directing the respondents 1 to 9 to initiate appropriate action against the respondents 10 and 11 for closure of 22 ICFAI National Colleges and ICFAI Business Schools, conducting full time academic programs, and ICFAI Study Centre for 360 Flexible Education throughout the State of Tamil Nadu and safeguard the interest of students who are pursuing their studies with respondents 10 and 11.

2. W.P.Nos.17126 and 17127 of 2008 have been filed for issuance of a writ of certiorari to call for the records relating to the order of the respondent in file No.37-3/Legal/AICTE, dated 30.06.2008, and to quash the same.

3. W.P.No.17128 of 2008 is for a mandamus, directing the respondent to delete the name of the petitioner from the List of Unapproved Institutions maintained in its website www.aicte.ernet.in.

4. Though all these Writ Petitions involve an identical issue, they are being dealt with separately as under :

W.P.No.30664 of 2006 :
5. The case of the petitioner goes thus :
5.1. He saw an advertisement in newspapers stating that ICFAI National College and ICFAI Business School were offering full time academic M.B.A., M.C.A., and M.S.programmes in the State of Tamil Nadu. He also saw an advertisement that ICFAI was offering distance learning programme under the mode of 360 Flexible Learning Programmes in the State for the courses viz., B.B.A., B.C.A., B.Ed; B.S.Programmes in Marketing, Banking, Insurance and Accounting; Bachelor Degree Programmes such as B.A., B.Sc., B.Com., B.G.L., B.L.Sc., B.J. and Master Degree Programmes, namely, M.Ed., M.A., M.Sc., M.Com., L.L.M., M.L.Sc., M.J. and M.P.P.

5.2. A probe conducted by the petitioner on the matter revealed that the contents of the paper advertisements were given in a misleading manner without disclosing the author who gave advertisement and the status of ICFAI National College, ICFAI Business School, ICFAI Distance Education/ 360 Flexible Education, ICFAI University etc. He went through the prospects of ICFAI University, ICFAI Institution and ICFAI National College and came to know that ICFAI University (in short, "the University") represents the multi-state network of universities, sponsored by Institute of Chartered Financial Analysts of India (in short,"the Institute") under specific Acts in Uttaranchal, Tripura, Sikkim, Meghalaya and Mizoram, which consequently confers degrees at bachelor, master and doctoral levels on eligible students. A perusal of the brochure issued to the students does not disclose as to which University is going to confer degrees to the students. The method of examination, selection of students, collection of fees are not in consonance with the statutory requirements and the respective courses of various disciplines.

5.3. As per the 360o Flexible Learning Program Prospectus, the 10th respondent Institute disclosed that the Institute had constituted the study centres which have been stated in the University prospectus. Therefore, the Institute and the University, who are respondents 10 and 11 have collusively played a fraud upon the innocent student community at large without authority of law.

5.4. As per the ICFAI National College Prospectus, 23 full time academic National Colleges have been established throughout the State of Tamil Nadu and Pondicherry. ICFAI was originally granted University status under Chhattisgtarh Act 2/2002, which was challenged invoking Article 32 of the Constitution of India in a Public Interest Litigation and the same was allowed by the Supreme Court, quashing the Act. On the Act being quashed, ICFAI was no longer empowered to conduct such classes. In the meanwhile, the State of Uttaranchal passed Act 16/2003, providing for ICFAI University at Dehradun, which came into effect on 10.07.2003. The University Grants Commission

has also declared the same as a private University under Section 2 (f) of the UGC Act on 22.07.2005.
5.5. Earlier, another Public Interest Litigation was filed, seeking for a writ of mandamus, directing the closure of study centres, Distance Education and regular course of 10th and 11th respondents so as to safeguard the interests of students who were pursuing their studies and the First Bench of this Court restrained ICFAI University and ICFAI National College from granting any fresh admissions and collecting fees from any of the students. In spite of the same, respondents 10 and 11 continued to issue paper advertisement and notifications inviting applications for admissions to the courses in the name of ICFAI National College, ICFAI Flexible Education etc. Therefore, unless immediate action is taken, the valuable career of the students of Tamil Nadu and other States will be affected to a greater extent. The constitution of study centres and offering programmes and granting degrees by respondents 10 and 11 in the State of Tamil Nadu are in violation of various Central and State enactments.
5.6. Hence, this Writ Petition.

6. First respondent, namely, University Grants Commission, has filed a counter, stating as follows :
6.1. In the year 2003, the State of Uttaranchal enacted the ICFAI Act, 2003 (Act No.16 of 2003) to establish and incorporate a University in the State, providing for high quality education in the areas of Applied Financial Management, General Management, Applied Sciences and Technology, sponsored by ICFAI, Hyderabad, Andhra Pradesh, and to provide for matters connected therewith. The State Government, vide its Notification dated 23.09.2003, accorded sanction to the establishment of ICFAI University with effect from the date of publication of the Notification in the official gazette. The University Grants Commission, vide its Notification dated 22.07.2005, has included the said private University, namely, ICFAI University, Dehradun, Uttaranchal, in the list of universities maintained by UGC under Section 2 (f) of the University Grants Commission Act,1956.

6.2. So far as the Study Centres and Off-campus centres opened by ICFAI, Dehradun, is concerned, the same has not been approved by UGC.

6.3. Regulation 3.2 of the University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulations,2003, provides that a private university shall be a unitary university having adequate facilities for teaching, research, examination and extension services. Further, Regulation 3.3 mandates that a private university established under the State Act shall operate ordinarily within the boundary of the State concerned. However, after development of the main corpus, in exceptional circumstances, the university may be permitted to open off-campus centres, off-shore campuses and study centres after five years of its coming into existence, subject to the conditions stipulated therein. In view of Regulation 3.3 of the University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulations,2003, the said University cannot open any off-campus centres, off-shore campuses and study centres before the completion of five years of its coming into existence and that too subject to fulfilling various conditions stipulated therein under Regulations 3.3.1, 3.3.2, 3.3.3, 3.3.4 and 3.3.5. In addition, a private University is also required to fulfil the minimum criteria in terms of programs, faculty, infrastructural facilities, financial viability etc., as laid down by various statutory bodies and councils, such as AICTE, Bar Council of India, Distance Education Council, Dental Council of India, Medical Council of India, National Council for Technical Education etc.

6.4. As regards the conferring of degrees, unless a degree is specified by the Commission within the meaning of Section 22 (3) of the UGC Act, the same cannot be conferred or granted by any university including ICFAI.

7. The second respondent AICTE has filed a counter, stating as follows :

7.1. AICTE has not approved any of the courses conducted either by the 10th respondent ICFAI Society or the 11th respondent ICFAI University, situated at Deharadun. ICFAI University was the 73rd respondent in Prof.Yashpal's case before the Supreme court reported in 2005 AIR SCW 1168, which, having become final and binding on all the parties concerned, cannot call for the very same courses outside the State.

7.2. AICTE Act was brought into force in the year 1987 by the Parliament with the objects of proper planning and co-ordinated development of the technical education system throughout the country and for promotion of qualitative improvement of such education and for a planned quantitative growth and regulation and for proper maintenance of the norms and standards. AICTE is empowered to regulate the technical education system in all the areas wherever it is imparted in India and there cannot be any dichotomy in standards of technical education as it would be against the intention of the legislature in bringing into force of the AICTE Act. Therefore, respondents 10 and 11 cannot contend that even though they impart technical education, they fall outside the purview of the AICTE Act. AICTE Act, being a subsequent legislation and also a special one so far as the field of technical education is concerned, will prevail over other enactments wherever there is conflict with any other enactments.

7.3. The grant of degrees fall under the purview of UGC Act and the AICTE is empowered to regulate the imparting of technical education itself in any form where by way of tutorial education, collegiate education or university education. For imparting technical education, the norms set out by AICTE are to be followed and AICTE is empowered to make regulations for strict enforcement of said norms and standards and no person, institution or body can impart technical education without the permission of AICTE.

7.4. AICTE has already initiated action against unapproved institutions conducting technical education and it has also issued show cause notices to all the institutions where it had information that such institutions are conducting unapproved courses in technical education and taken necessary action by itself and also by requesting the respective State Governments to close down the unapproved institutions. AICTE has has given public notices to caution the general public against being cheated by the said unapproved institutions and has also published list in its website of the unapproved institutions, conducting unapproved technical courses in violation of the AICTE Act.

8. Third respondent-Distance Education Council has filed a counter to the following effect :

8.1. Indira Gandhi National Open University Act 1985 was introduced in order to establish and incorporate an Open University at the national level for introduction and promotion of Open University and Distance Education System in the educational pattern of the country and for the co-ordination and determination of standards in such system. Section 28 of the Act provides for constitution of Distance Education Council for the purpose of taking such measures as necessary, consistent with the objects of the University to provide innovative programmes, which conform to the standards in the institutions offering Distance Education programmes and to prevent the institutions from offering courses and programmes which do not conform to the standards laid down by the Council. The third respondent has been taking various steps to maintain the standards of Distance Education in the country.

8.2. In order to safeguard the interests of the students in India and to ensure the quality of education, the Distance Education Council has framed guidelines for regulating the establishments and operation of Open and Distance Learning institutions in India. The statutory bodies, namely, University Grants Commission and Distance Education Council were established by a bill passed by the Parliament and the guidelines issued by these bodies have legal sanctity. Therefore, no

institution is eligible to impart distance education courses without the prior approval of Distance Education Council.

8.3. The 11th respondent, which is a private university, is not authorised to impart education through Distance Mode of Learning because the norms and guidelines issued by UGC provide that any new University cannot impart education through distance mode of learning within the period of 5 years from the date of inspection and even after the completion of 5 years, no institute can impart education through distance mode without getting approval from Distance Education Council. The third respondent has not granted any permission to respondents 10 and 11 to offer courses through distance mode.

9. Eighth respondent, Bar Council of India, has filed a counter, stating as follows :
It has granted temporary recognition for the purpose of conferring law degree in three year and five year law courses to ICFAI University at Dehradun, tenth respondent herein. The said temporary approval of affiliation of Department of Law in ICFAI University in Dehradun, State of Uttaranchal, has been issued by the Legal Education Committee of the Bar Council of India initially for a period of three academic years, commencing from 2004-2005 to 2006-2007 with an intake of two sections of 80 students in each section subject to certain terms and conditions. No off-campus study centres for the Law course can be opened in any other part of the country except within the University campus and if there is any such study centre outside the ICFAI University campus, it shall not be an authorised one. In the absence of any specific allegation by the petitioner in this regard, BCI is not in a position to take such action against the 11th respondent. BCI has not granted any approval to ICFAI University, Dehradun, to start any off-campus study centres for law courses anywhere in India. Even after completion of five years of existence of a University, for starting any off-campus study centres, such University is required to get approval of the Bar Council of India, after getting permission from UGC. The degrees awarded by 11th respondent are not prescribed educational qualifications for enrolment as advocates on the rolls of any State Bar Councils and therefore the Bar Council of India cannot have any control over the ICFAI University, Dehradun.

10. Tenth respondent, namely, Institute of Chartered Financial Analysts of India (ICFAI), has filed a counter, stating as follows :

10.1. ICFAI was established in the year 1984 as a not for profit educational society registered under the Andhra Pradesh (Telangana Areas) Public Societies Registration Act. It was set up with the objective of imparting high quality training in Applied Finance and related disciplines to students, working executives and professionals. The X Plan report of the University Grants Commission has recommended for growth of educational institutions in the private sector to meet the increasing demand for education, which is not being adequately met by the Government. ICFAI started rendering education by launching the program of Chartered Financial Analysts (CFA) in 1985. This program was started when there was a public need for competent Financial Analysts and Investment Managers. The program has been designed to equip the students and broaden their fields of understanding and experience in Corporate Finance, Investment Management and Financial Services. With this program, ICFAI has created a niche and has been instrumental in developing a new cadre of Finance Professionals in India. Over the years, CFA program has received overwhelming response from a cross-section of students, professionals and working executives and is accepted and recognised by Universities and Government institutions. In addition, various reputed companies in India have recruited the students, who have successfully completed the CFA program. Many of the companies have brought out advertisements for recruitment, wherein they have recognised CFA as an eligible qualification along with professional qualifications such as CA, CWA, CS etc.

10.2. In the year 1995, ICFAI established ICFAI Business Schools in eight locations to offer business education. Over a period of time, with the growth in the demand for this program, ICFAI has set up Business Schools in more cities and, at present, has 14 Business Schools around the country. The business education at ICFAI Business Schools is based on innovative learning methodologies, constant improvement, cultivation of practical skills and an unwavering commitment to academic quality. The ICFAI Business School has already produced 7504 management graduates who are well placed in some of the best known corporate houses. ICFAI has established an all India network of its branch offices at 200 locations and has set up around 180 centres for full-time campus based programs. It conducts exams at over 100 test centres all over India four times a year.

10.3. ICFAI University, Dehradun, has been included by UGC in the list of universities under Section 2 (f) of the UGC Act,1956 and it confers degrees at bachelor, master and doctoral levels on eligible students. It offers a number of educational programs in finance, banking, insurance, accounting, law, management, information technology, arts, commerce, education and science and technology at bachelor and master levels on full-time campus and distance learning formats. The University confers degrees only within the territorial jurisdiction of the State and has no study centres, constituent colleges, off-campus centres etc. beyond the territory of the State of Uttaranchal.

10.4. One of the constituents and centres of excellence of ICFAI is the ICFAI National College (INC), which has more than 150 centres spread around the country. The 360 Flexible Learning Program offered by the 10th respondent is not a Distance Education Program and thus is not violating the DEC Guidelines, Bar Council of India Act and NCTE Act. The Flexible Learning Program has been designed for the students who registered with ICFAI University, Dehradun, to take examinations as private candidates, which is in the nature of a tutorial class to help interested students, and the said program is a program of the tenth respondent and not of the eleventh respondent University and this programme is offered at the Branch Offices of the tenth respondent. ICFAI National Colleges, IBS Centres and 360 Flexible Education Centres are its constituents and as such they are not violating any authority of law in the State of Tamil Nadu.

11. The counter of eleventh respondent, namely, ICFAI University, reads thus :

ICFAI University has been established by way of a gazette publication by the State of Uttaranchal on 23rd September,2006, to which the Governor of Uttaranchal, under sub-section (2) of Section 4 of the ICFAI University Act,2003 (Act 13 of 2003) has accorded sanction. The University has been sponsored by the tenth respondent. The University was established with an emphasis of providing high quality and industry relevant education in the areas of Applied Finance Management, General Management, Applied Sciences and Technology in the State of Uttaranchal. The University was included in the list of Universities under Section 2 (f) of the UGC Act. The ICFAI University Act,2003, clearly stipulates that the Headquarters shall be at Dehradun and it may have constituent colleges, regional centres and study centres under Section (6) of the Act. The prospectus issued by the University specifically states that the University has no study centre outside the authorised jurisdiction. The University confers degrees only within the territorial jurisdiction of the State of Uttaranchal and has no study centres, constituent colleges, off-campus centre, beyond the territory of the State of Uttaranchal. The University designs its curriculum, conducts examinations and awards degrees to the successful students of the University. The tenth respondent society conducts the 360 Flexible Learning Program, which is designed for the students appearing as private candidates for the examinations conducted by the eleventh respondent University. There is no violation of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations,2003, in view of the fact that the eleventh respondent has no study centre or constituent college outside the territorial jurisdiction of its State and consequently permission of the Visitor of the State Government, as stipulated under ICFAI Act, needs no compliance.

12. The counter of twelveth respondent ICFAI University, Tripura, goes thus :
The University is not conducting any course of study outside the State of Tripura so also in Tamil Nadu. The University is not having any study centre, regional centre or off-campus centres anywhere in India, more particularly outside the State of Tripura. The University has nothing to do with the issue involved in this case, as the said issue relates only to respondents 10 and 11.

13. Respondents 13 to 17 also filed a counter in the lines of respondents 10 and 11. They have also stated that passing any adverse orders against respondents 10 and 11 would cause irreparable loss and damage to the interest of large number of student community.

14. Mr.P.Jayaraman, learned Senior Counsel for the petitioner, would cite the following authorities :

(i) Prof. Yashpal v. State of Chhattisgarh, 2005 (5) SCC 420 :

"24. In the introductory paragraph of Chapter IV dealing with standards of teaching, the Commission recorded its views in the following words:
The need for high standards
Introduction.It is the primary duty of a university to maintain the highest standards of its teaching and examinations. A university is a place of higher education where the personality and capacities of the students are developed to the utmost by teachers who should themselves be at work at the frontiers of knowledge in their respective fields. The success of a university is to be judged as much by the type of graduates it turns out as by the amount and quality of research contributed by its teachers and research students. It must be clearly recognised that there is no conflict involved between the twofold function of a university to educate its members and to advance the frontiers of knowledge the two functions are, in fact, complementary. Unless high standards of teaching and examinations are maintained, research will suffer, since research can continue uninterruptedly only if there is a regular supply of graduates well prepared by general education for specialised research work. On the other hand, if research is neglected by teachers, their teaching will lack vitality and will rapidly become stale. A degree must always be what a university makes it by the kind of teaching it imparts and the type of intellectual and social life it provides for its members. If our universities are to be the makers of future leaders of thought and action in the country, as they should be, our degrees must connote a high standard of scholarly achievement in our graduates."

"25. The Commission noted that many of the universities did not compare favourably with the best of British and American universities in respect of their teaching and examination standards. Unless highest standards of teaching in the universities are ensured, the degree given by them will not command recognition and respect. The Commission observed:
 Our universities should maintain the academic character of their work on a level recognised as adequate by the universities of other countries. Universities are our national institutions, and to keep up our national prestige, our degrees must be such as to command international recognition.

"31. In Osmania University Teachers Assn. v. State of A.P.8 the Court reiterated that it was the exclusive responsibility of the Central Government to determine the standards for higher education and the same should not be lowered at the hands of any particular State as it was of great importance to national progress...."

"33. The consistent and settled view of this Court, therefore, is that in spite of incorporation of universities as a legislative head being in the State List, the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standards in

institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent. It is the responsibility of Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained."

"34. In order to achieve the aforesaid purpose, Parliament has enacted the University Grants Commission Act. First para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 (for short the UGC Act) is illustrative and consequently it is being reproduced below:
The Constitution of India vests Parliament with exclusive authority in regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. It is obvious that neither coordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in universities, both old and new. It is also necessary to ensure that the available resources are utilised to the best possible effect. The problem has become more acute recently on account of the tendency to multiply universities. The need for a properly constituted Commission for determining and allocating to universities funds made available by the Central Government has also become more urgent on this account.

"35. In the second para, it is said that the Commission will also have the power to recommend to any university the measures necessary for the reform and improvement of university education and to advise the university concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the coordination of facilities and maintenance of standards in universities. Sections 22 and 23 are important and are being reproduced below:

22. Right to confer degrees.(1) The right of conferring or granting degree shall be exercised only by a university established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a university under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, degree means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.
23. Prohibition of the use of the word University in certain cases.No institution, whether a corporate body or not, other than a university established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word University associated with its name in any manner whatsoever:

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which, immediately before such commencement, had the word University associated with its name.

"37. It is important to note that in view of Section 22 of the UGC Act, the right of conferring or granting degree can be exercised only by a university or an institution deemed to be university under Section 3 of the aforesaid Act or institution especially empowered by an Act of Parliament to confer or grant degrees."

"38. A degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the subject concerned by doing some original research work. A university degree confers a kind of status upon a person like a graduate or a postgraduate. Those who have done research work and have obtained a PhD, DLitt or DSc degree become entitled to write the word Doctor before their names and command certain amount of respect in society as educated and knowledgeable persons. That apart, the principal advantage of holding a university degree is in the matter of employment, where a minimum qualification like a graduate, postgraduate or a professional degree from a recognised institute is prescribed. Even for those who do not want to take up a job and want to remain in a private profession like a doctor or lawyer, registration with the Medical Council or the Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognised by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies."

"39. Mere conferment of degree is not enough. What is necessary is that the degree should be recognised. It is for this purpose that the right to confer degree has been given under Section 22 of the UGC Act only to a university established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a university under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this section provides that degree means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognised by the Government was pointed out by a Constitution Bench in S. Azeez Basha v. Union of India".

"46. Entry 66 which deals with coordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in the Union List and Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66 (see Prem Chand Jain v. R.K. Chhabra12 and Osmania University Teachers Assn. v. State of A.P.8). The Act has been enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite calibre and a proper student-teacher ratio. For this purpose, the Central Government has made a number of rules in exercise of powers conferred by Section 25 of the UGC Act and the Commission has also made regulations in exercise of power conferred by Section 26 of the UGC Act and to mention a few, the UGC Inspection of Universities Rules, 1960, the UGC Regulations, 1985 Regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 Regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc. UGC with the approval of the Central Government and exercising power under Section 22(3) of the UGC Act has issued a schedule of degrees which may be awarded by the universities."

"47. The inter se evaluation of merit of candidates is often required to be done while making selection for some higher or specialised course of study or in the matter of employment. One of the important functions to be performed by UGC is coordination and determination of standards in institutions for higher education so that some kind of uniformity is maintained in level of teaching and examination and also award of degrees by various universities."

"48. Any State legislation which stultifies or sets at naught an enactment validly made by Parliament would be wholly ultra vires"

"54. In exercise of power conferred by Section 26 of the UGC Act, the University Grants Commission has made the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003. The Regulations have been made with the object of providing for a regulatory mechanism for establishment and operation of private universities and for safeguarding the interests of the student community with adequate emphasis on the quality of education and to avoid commercialisation of higher education and also to maintain standards of teaching, research and examination. Regulation 1.2 provides that the same shall apply to every private university established by or incorporated under a State Act, before or after the commencement of these Regulations. Regulation 1.5 provides that any private university which has started functioning before the commencement of these Regulations shall ensure adherence to these Regulations within a period of three months from the notification thereof and failure to comply with this requirement shall render any degree/diploma awarded by a private university as unspecified in terms of Section 22(3) of the UGC Act and shall invite penalty under Section 24 of the said Act...."

"55. Regulation 3.3 puts restriction on establishment of a university outside the State. Regulation 5 provides consequences of violation and lays down that if the Commission is satisfied that a private university has, even after getting an opportunity to do so, failed to comply with the provisions of any of the Regulations, the Commission may pass orders prohibiting the private university from offering any course for award of the degree or diploma. Similarly, UGC is empowered to take action against a private university awarding first degree and/or a postgraduate degree/diploma, which is not specified by UGC and any private university continuing such programme and awarding unspecified degree shall be liable for penalty under Section 24 of the UGC Act."

"60....In view of Article 245(1) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The impugned Act which specifically makes a provision enabling a university to have an off-campus centre outside the State is clearly beyond the legislative competence of the Chhattisgarh Legislature."

"64....Regarding technical, medical or dental colleges, etc. affiliation may be accorded if they have been established after fulfilling the prescribed criteria laid down by All India Council of Technical Education, Medical Council of India, Dental Council of India or any other statutory authority and with their approval or sanction as prescribed by law."

(ii) Rai University v. State of Chhattisgarh, 2005 (7) SCC 330:

"24. In the alternative, the learned counsel has submitted that the law school of the erstwhile ICFAI University may be affiliated to any university in Andhra Pradesh. It is not possible to issue such a direction as the State of Andhra Pradesh or any university in the said State were not even a party to the writ petition. It is always open to the law school to move an appropriate application seeking affiliation to a university which has jurisdiction and is empowered under the relevant Rules and

Regulations and other provisions of law applicable to the said university."

(iii) P.A.Inamadar and Others v. State of Maharashtra, 2005 (4) CTC 81:

"138. However, different considerations would apply for graduate and post-graduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a University, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth."

(iv) Nautam Prakash DGSVC v. K.K.Thakkar, 2006 (5) SCC 330 :

"24. The legislature of a State while enacting a law is required to maintain the territorial nexus. Only in certain cases, extra-territoriality provided for in the Act is accepted. The field of legislation in respect of religious endowments and religious institutions is referable to Item 28 of List III of the Seventh Schedule of the Constitution. Ordinarily, therefore, the legislation enacted by a State will be applicable only within the territorial limits thereof. There is a general presumption that the legislature does not intend to exceed its jurisdiction... A statutory authority, as is well known, must exercise its jurisdiction within the four corners of the statute. It cannot act beyond the same. Any order which is passed by an authority which lacked inherent jurisdiction would be ultra vires."

(v) A Division Bench judgment of this Court in Raghavan V and Others v. Tamil Institute of Agricultural and Rural Development, 1987 WLR 684 :

"2.The unauthorised existence of the educational institutions has come to light consequent upon a decision of the Gandhigram Rural Institute, whose Syndicate found that their earlier decision to affiliate what is known as Tamil Institute of Agriculture and Rural Development which is run by a private Educational Trust was not legal and that the Institute could not have been legally affiliated."

"22.... This is a case where the Educational Trust appears to have deliberately attempted to wriggle out of the Madurai Kamaraj University Act by establishing some sort of rapport with the deemed University. We are conscious of the fact that out decision is likely to affect adversely the students, but in the interest of curbing the unabated activities of some persons who start unauthorised educational institutions, such a hard and drastic decision has to be taken. We only hope that the Government will be vigilant enough so as to prevent individuals and institutions from starting unauthorised educational institutions, so that at least hereafter the students will not be trapped or lured into taking admissions in such institutions with the temptation of getting some degrees."

(vi) Gramvikas Shikshan Prasarak Mandal v. State of Maharashtra, AIR 2000 BOMBAY 437 :

In this case, the Bombay High Court followed the Judgment of the Supreme Court in Unnikrishnan's case, AIR 1993 SC 2178, as follows :

"The private educational institutions merely supplement the effort of the State in educating the people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist

without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory in the interest of general public upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education or requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognising/affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 15 of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well."

"Private institutions which enter the arena of providing education, perform the role of supplementing the function of the State. The establishment and functioning of those institutions must therefore be subject to regulation by the State to secure the interest of the students and teachers, of those who are taught and those who teach. Recognition is a means of ensuring that the students of the institution can appear at examinations conducted by the State and be conferred with qualifications granted by the State and its authorities...."

(vii) Kumanchal Institute of Degree & Deploma & Ors. v. Chancellor, M.J.P.Rohilkhand University & Ors., 2007 (5) SUPREME 376 :
In this case, a notification was issued under Section 4 (1-A) of the Uttar Pradesh State Universities Act,1973, for constitution of Mahatma Jyotiba Phule Rohilkhand University. Thereafter, a proposal for starting a new course in distance education by the said university was rejected by an order passed by the Chancellor, against which a Writ Petition was filed and the same came to be dismissed by High Court on the ground that in the absence of first ordinance issued by State, initiation of distance education programme was illegal. Against the said order, an appeal was filed before the Supreme Court and the same was also dismissed, holding as follows :
"In a study centre, teachers are appointed, practical classes are held and all other amenities are required to be provided for running a full-fledged institution or college are provided. Such an establishment, although named as a study centre, and despite the fact that course of study and other study materials were supplied by University could not be permitted to be established beyond territorial jurisdiction of University. A statutory authority, it is well known, must act within four-corners of the statute. Such territorial jurisdiction of University must be maintained as otherwise a chaos would be created."

(viii) An unreported decision of a Division Bench of this Court in W.P.No.8029 of 2006, dated 20.02.2007, in S.T.Krishnamoorthi v. Union of India and Others :

"28. After analysing the various provisions of the UGC Act and other analogous provisions, the Court held the 2002 enactment passed by the Chhattisgarh State as ultra vires and the same was struck down."

"31. Since the case of the firth respondent does not fall under the categories provided in terms of Section 13 and they have also not obtained any permission in terms of Section 10-A, the institution started by them and also advertised by them and pursuant to that, admitting of students is clearly illegal and they are also liable for penal action in terms of the IMC Act as well as UGC Act. Since the very starting of the institution without prior permission of the first respondent Union of India itself is illegal, we are not going into the question as to whether the fifth respondent is having any infrastructural facilities as contended by them. We have only put it on record the report submitted by the Superintendent of Police regarding the lack of infrastructural facilities available with the fifth respondent. Even as per the admission of the fifth respondent college, they have proposed to run pre-medical courses for two years and they will be giving training for the students allegedly on behalf of the Southern Medical University, Republic of China."

"32. It is the endeavour of this Court to prevent the fifth respondent playing a role with the careers of the students and jeopardise their future irretrievably and we cannot allow the fifth respondent to function without legal sanction and without any infrastructural facilities and to run it as a business venture with a view to make money from gullible individuals anxious to obtain admission to professional colleges. As pointed out by the Supreme Court in A.P.Christians Medical Educational Society case (cited supra), this is nothing but a daring imposture and aculduggery. But for entertainment of the public interest litigation filed by the petitioner, the fifth respondent would have admitted the gullible students and would have gone ahead with their business venture."

"33. As was held in the Prof.Yashpal's case (cited supra), the Supreme Court emphasised the need for a quality education in paragraph 63 as follows :

"63. The impugned Act which enables only a proposal of a sponsoring body to be notified as a university is not likely to attract private capital and a university so notified cannot provide education of any kind much less of good quality to a large body of students. What is necessary is actual establishment of institutions having all the infrastructural facilities and qualified teachers to teach there. Only such colleges or institutions which impart quality education allure the best students. Until such institutions are established which provide a high level of teaching and other facilities like well-equipped libraries and laboratories and a good academic atmosphere, good students would not be attracted. In the current scenario, students are prepared to go to any corner of the country for getting good education. What is necessary is a large number of good colleges and institutions and not universities without any teaching facility but having the authority to confer degrees."

"34. In the light of the above, we have no hesitation in holding that the fifth respondent has no legal right to run institution of this kind, which has been advertised by them in the newspapers, and they are hereby permanently injuncted from running the institution without complying with the provisions of the IMC Act and UGC Act referred to above."

(ix) L.Muthukumar v. State of Tamil Nadu, AIR 2000 SUPREME COURT 3084 :
"The candidates, who had written the examination at the time when their institutes had recognition, are not entitled for diplomas/certificates or mark sheets consequent upon de-recognition of their institutions by virtue of decision rendered by High Court subsequent to the public examination such candidates were only entitled for publication of the results of the examination taken and nothing more. In relation to teachers training course, mere passing of public examination is not enough. It must be coupled with proper training in a recognized institute in order to get meaningful and purposeful results."

"14.... Assuming that in few cases such mistakes are committed in issuing diplomas/certificates with the endorsement that the Teacher Training Institute in which a student studied is not recognised by the Director of School Education, Government of Tamil Nadu, such mistakes cannot be allowed to be repeated or perpetuated in the light of the judicial pronouncements referred to above, which have become final. Added to this, the institutes where the petitioners underwent training which were de-recognised by virtue of judgment in P.M.Joseph's case were covered by the said judgment. Hence, the petitioners cannot escape but are bound by the said judgment. Their seeking writ of mandamus for issuance of mark sheets and/or diplomas/certificates contrary to the said judgment, that too after a period of six years, could not be granted by the High Court and rightly so in our opinion. We are of the considered opinion that before teachers are allowed to teach innocent children, they must receive appropriate and adequate training in a recognised training institute satisfying the prescribed norms, otherwise standard of education and career of children will be jeopardised... Allowing ill treated teachers coming out of derecognised or unrecognised institutes or licensing them to teach

the children of impermissible age, contrary to the norms prescribed, will be detrimental to the interest of the nation itself in the sense that in the process of building a great nation, teachers and educational institutions also play a vital role..."

(x) Sadakathullah Appa College v. All India Council for Technical Eucation & Others, 2004 Writ L.R.72.:

"The petitioner institutions have been practically defying AICTE and have so far managed to function without obtaining the AICTE's approval. They cannot be allowed to do so any longer."

"The scope of the Council's power is vast. It includes every facet of technical education in the country. It enables the Council to do everything that is required to achieve the objects for which it was formed, namely, the development of technical education system in the country and the qualitative improvement thereof. Having regard to the scheme of the Act, it is not possible to accept the submission that the Act is meant to apply only to new institutions and not to those which were in existence at the time the Act was brought into force."

"Section 10 (1) (i), inter alia, empowers the Council to lay down the norms and standards for the courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations. Clause (p) empowers the Council to inspect or cause to inspect any technical education. Clause (n) empowers it to take necessary steps to prevent commercialization of technical education. Clause (u) enables it to set up National Board of Accredition. These provisions taken together would clearly indicate that every institution which can be regarded as a technical institution by reason of such an institution offering a course which is a technical course is subject to the jurisdiction of the AICTE and must conform to the requirements stipulated by the Council for the establishment and functioning of such institutions."

15. We have heard the learned counsel for the parties; given our thoughtful consideration to the rival submissions and also gone through the records, coupled with the authorities.

16. Institute of Chartered Financial Analysts of India Society, tenth respondent herein, is registered under the Andhra Pradesh (Telangana Areas) Public Societies Registration Act, 1350 Fasli (Act I of 1350 F) on 20.10.1984. Except the Society registration, no Central or Stage Government or any statutory body or competent authority recognized the said Society as an institution. ICFAI Society originally made an application to the Government of Chhattisgarh for establishment of a University, namely, ICFAI University, pursuant to which the Government of Chhattisgarh notified the establishment of ICFAI University, under Chhattisgarh Act 2 of 2002. The said Notification was challenged before the Supreme Court in a Public Interest Litigation and the Supreme Court struck down the Notification issued by the State Government, as a result of which the ICFAI University ceased to exist. Thereafter, the ICFAI Society made another application to the Government of Uttaranchal for establishment of another University in that State and the said Government passed Act 16/2003, providing for ICFAI University at Dehradun, which came into effect on 10.07.2003. The University Grants Commission also declared the same as a private University under Section 2 (f) of the UGC Act on 22.07.2005.

17. The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. It is obvious that neither co-ordination nor determination of standards is possible unless the Central Government has some voice in determination of standards of teaching and examination in Universities, both old and new. For this very purpose, the Central Government has established University Grants Commission on 05.11.1956, as a body corporate to inquire into the

financial needs of Universities and allocate and disburse grants to Universities for any general or specified purpose. It is the duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities.

18. Setting up of private universities through State Acts is a recent phenomenon. An effective mechanism for regulating the functioning of existing State Universities recognized by the University Grants Commission under Section 2 (f) and 12-B of the UGC Act,1956, is already in place. All the recognized State Universities under the purview of the University Grants Commission are receiving grants from the UGC and are obliged to follow the statutory regulations made under the UGC Act, which inter alia include regulations defining the minimum qualifications that should be possessed by any person to be appointed to the teaching staff of the universities, regulations defining the minimum standards of instruction for the grant of a degree by a university etc. For private universities belonging to a separate category altogether, a suitable regulatory mechanism is essential by way of laying down the conditions specifically for the establishment and operation of such universities for safeguarding the interests of the student community with adequate emphasis on the quality education and to avoid commercialization of higher education. Accordingly, in exercise of the powers conferred by clauses (f) and (g) of sub-section (1) of Section 26 of the University Grants Commission Act,1956, the UGC has made the regulations called UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003, hereinafter referred to as "the Regulations"). These regulations shall apply to every private university established by or incorporated under a State Act, before or after the commencement of these regulations. They shall also apply to all the degrees/diplomas/certificates (including those offered in India in collaboration with foreign universities) offered under formal, non-formal or distance education mode by the private university.

19. The ICFAI University comes within the definition clause of 2.1 of the said Regulations, which refers to "private university". Of these regulations, it is quite relevant to extract Regulations 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 5.1 and 5.2, which read as under :

"3.3. A private university established under a State Act shall operate ordinarily within the boundary of the State concerned. However, after the development of main campus, in exceptional circumstances, the university may be permitted to open off-campus centres, off-shore campuses and study centres after five years of its coming into existence, subject to the following conditions :

3.3.1.The off-campus centre(s) and/or the study centre(s) shall be set up with the prior approval of the UGC and that of the State Government(s) where the centre(s) is/are proposed to be opened.

3.3.2. The over-all performance of the off-campus centre(s) and/or the study centre(s) shall be monitored annually by the UGC or its designated agency. The directions of the UGC for management, academic development and improvement shall be binding.

3.3.3. If the functioning of the said centre(s) remains unsatisfactory, the private university shall be instructed by the UGC to close down the said centre(s), which shall be binding on the university. In such a situation, the interests of the students already enrolled therein shall be protected.

3.4. A private university shall fulfil the minimum criteria in terms of programmes, faculty, infrastructural facilities, financial viability etc., as laid down from time to time by the UGC and other concerned statutory bodies such as the All India Council for Technical Education (AICTE), the Bar

Council of India (BCI), the Distance Education Council (DEC), the Dental Council of India (DCI), the Indian Nursing Council (INC), the Medical Council of India (MCI), the National Council for Technical Education (NCTE), the Pharmacy Council of India (PCI) etc.

3.5. The courses of studies prescribed for a first degree and/or the post-graduate degree/diploma programmes should have been formally approved by the respective academic bodies of the private university, such as Board of Studies, Academic Council and Governing/Executive Council.

3.6.The programmes of study leading to a degree and/or a post-graduate degree/diploma offered by a private university shall conform to the relevant regulations/norms of the UGC or the concerned statutory body as amended from time to time.

3.7. A private university shall provide all the relevant information relating to the first degree and post-graduate degree/diploma programme(s) including the curriculum structure, contents, teaching and learning process, examination and evaluation system and the eligibility criteria for admission of students, to the UGC on a proforma prescribed by the UGC prior to starting of these programmes.

3.8. The UGC on detailed examination of the information made available as well as the representations and grievances received by it from the students as well as the concerned public relating to the deficiencies of the proposed programme(s) not conforming to various UGC Regulations, shall inform the concerned university about any shortcomings in respect of conformity to relevant regulations, for rectification. The university shall offer the programme(s) only after necessary rectification.

5. Consequences of violations
5.1. After inspection and assessment of a private university providing first degree and/or post graduate degree/diploma courses, the UGC may indicate to the university any deficiency and non-conformity with the relevant UGC Regulations and give it reasonable opportunity to rectify the same. If the Commission is satisfied that the private university has, even after getting an opportunity to do so, failed to comply with the provisions of any of the Regulations, the Commission may pass an order prohibiting the private university from offering any course for the award of the first degree and/or the post-graduate degree/diploma, as the case may be, till the deficiency is rectified.

5.2. The UGC may take necessary action against a private university awarding a first degree and/or a post-graduate degree/diploma, which are not specified by the UGC, and inform the public in general through a public notification. A private university continuing such programme(s) and awarding unspecified degree(s) shall be liable for penalty under Section 24 of the UGC Act."

20. Similarly, All India Council for Technical Education (AICTE) was set up in 1945 by a Government resolution as a National Expert Body to advise the Central and the State Government for ensuring the coordinated development of technical education in accordance with approved standards. During the first three decades, the Council functioned quite effectively and there was a phenomenal development of technical education in this regard. However, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE. Most of these institutions have serious deficiencies in terms of even the rudimentary infrastructure necessary for imparting proper education and training. Barring some exceptions, there is scant regard for maintenance of educational standards.

21. Taking into account the growing erosion of standards, the Council, at its meeting held in 1981, came to the conclusion that a stage had been reached when it should be vested with statutory powers to regulate and maintain standards of technical education in the country. In pursuance of

these and other recommendations, a National Working Group was set up in November,1985, to look into the role of the AICTE. The National Working Group recommended that in order to enable the AICTE to play its role effectively, it shall have to be vested with necessary statutory authority. The National Policy on Education,1986, also stipulated that the AICTE will be vested with statutory authority for planning, formulation and the maintenance of norms and standards, accreditation, funding of priority, areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the coordinated and integrated development of technical and management education.

22. Accordingly, the powers and functions assigned to the AICTE, inter alia, provide laying down norms and standards for programmes and institutions, giving approval for setting up of technical institutions, prescribing guidelines for admission of students and the charging of fees, and inspecting and evaluating institutions periodically with a view to maintaining standards and to provide recognition or withhold recognition of programmes and institutions.

23. In this regard, an Act called All India Council for Technical Education Act,1987, (Act 52 of 1987) has been enacted by the Parliament, which came into force with effect from 28.03.1988, to provide for the establishment of All India Council for Technical Education with a view to the proper planning and coordinated development of the technical education throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.

24. As per Regulation 3.3 of the Regulations, no private University shall open off-campus centre, off-shore campus and study centres at least for a period of five years. Even thereafter, permission of visitor and consent of State Government, where it is proposed to open such centres, should be obtained. The ICFAI University, as established by Uttaranchal Act on 10.07.2003, was included in the list of Universities notified by the UGC only on 22.07.2005. At one breath, ICFAI National College is stated to be the constituent unit of ICFAI Society, whereas the brochure discloses that the said college is one of the constituent colleges of ICFAI University. Either of the stands taken above is unsustainable in law. Inasmuch as the ICFAI National College or ICFAI Business School or ICFAI Branch Office by whatever name it is called is established by the ICFAI Registered Society in Andhra Pradesh, such an institution cannot be located within the territory of the State of Tamil Nadu without obtaining permission from the State Government, affiliation of the Universities and, as such, the same would amount to bogus institution.
25. In Professor Yashwal's case, cited above, the Supreme Court, on an elaborate consideration of various aspects, declared that the private universities, including the ICFAI University, Raipur, established by State enactments, ceased to be in existence.

26. Excellence in education and maintenance of high standards are a must. To fulfil these objectives, the State must, in national interest, step in. The education, knowledge and learning, possessed by individuals, collectively constitute national wealth.

27. Different considerations would apply for graduate and post-graduate level of education as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a University, Board, Central or State Government or the like.

28. Conducting Distance Education, 360 Flexible Education, opening of constituent colleges, centres in other States like Tamil Nadu and offering PG and granting degrees are contrary to Regulations 3.3; 3.3.1; 3.3.2 and 3.3.6 of the Regulations.

29. The act of the respondents 10 and 11, constituting National Colleges and offering programmes without obtaining recognition from AICTE for imparting technical courses such as MBA and MCA, that too, without providing requisite infrastructural facilities violates the provisions of AICTE Act and Rules. Equally, the act of the respondents 10 and 11 in locating the constituent colleges and campus centres without obtaining prior permission of the Government of Tamil Nadu and necessary affiliation from the University concerned violates Section 3 of the Tamil Nadu Private College Regulations Act,1976. The ICFAI National College is located in the State of Tamil Nadu in various centres without affiliation of the University concerned and granting degrees of MBA and MCA, which are defined as technical education within the meaning of Section 2 (g) of AICTE Act. The respondents 10 and 11 are also offering almost all degree programmes and technical educational programmes through distance education under the mode of 360 Flexible Education throughout the State of Tamil Nadu contrary to the DEC Guidelines 2006, which regulate the establishment and operation of opening and distance learning institutions in India.

30. It is also seen that 10th and 11th respondents are also offering M.Ed. and B.Ed. Programmes through Flexible Education style. Under Section 14 (1) of the NCTE Act, permission of NCTE is necessary for offering M.Ed. and B.Ed. Courses. Therefore, offering of the said courses through 360 Flexible Education and granting degrees without obtaining permission from NCTE is a violation of the provisions of the NCTE Act. Also, running a constituent college in the name of ICFAI National College at Chennai without the permission of the Visitor viz., the Governor of Uttaranchal, is in utter violation of Sections 3 (c); 3 (k); 3 (1); (6); 12 (3) (b); 27,28-30 (a); 30 (b); 30 (e) and 31 of ICFAI University Act,2003 (Act No.16/2003 Dehradun).

31. That apart, the said respondents have issued misleading advertisements and notifications inviting applications for admission without furnishing the material particulars such as the name of the University, which would confer degree, status as to the ICFAI National College, Campus Centre and ICFAI business School in their disclosures and are collecting huge sums of amount from the students for the courses.

32. Consequent to the judgment of the Supreme Court in Prof. Yashpal's case, (cited above), various programmes offered by the erstwhile ICFAI University, Raipur, came to an end, but the tenth respondent, even as per its counter, is continuing to sponsor the said programs.
33. Though it is stated by the tenth respondent that ICFAI National School and ICFAI Business School are its constituent units and not of the eleventh respondent, as could be seen from the brochures, it is seen that the University that is going to confer degrees to the students is only the eleventh respondent i.e., ICFAI University, Dehradun. Even for the institutions which are run by a society, which is registered under a particular State, to impart technical education outside the jurisdiction of that State, getting prior permission of the State Government concerned is a must. Therefore, by no stretch of imagination, it can be stated that just because the programmes are conducted by ICFAI Society, they are permissible even without the approval of the authorities concerned, especially outside the territorial jurisdiction.

34. Even assuming that the tenth respondent is sponsoring all these programmes, since the said respondent was registered under Andhra Pradesh (Telangana areas) Public Societies Registration Act,1350 Fasli (Act I of 1350 F), in view of the setting up of University Grants Commission and UGC Act being enacted by the Parliament to maintain higher standards in education and to have a check on the institutions, which are imparting illegal education, and the said Act being a subsequent legislation, the tenth respondent cannot have any say that it is not governed by the UGC Act. Besides, though ICFAI has sponsored universities in different States and those universities have been established under separate enactments passed by the legislatures of the respective States, it

has not sponsored any such University in the State of Tamil Nadu. In other words, there is no such University sponsored by the tenth respondent in the State of Tamil Nadu, so also no separate enactment is passed by the State to that effect. Also, the University Grants Commission, Distance Education Council and All India Council for Technical Education filed their counters, stating that no permission was granted to ICFAI Society and ICFAI University to conduct such courses. In the absence of any such enactment and also prior permission of the statutory bodies like UGC, AICTE, BCI, DEC, NCTE etc. coupled with the State Government concerned which is Tamil Nadu, we wonder how the respondents 10 and 11 could set up off-campus centres/study centres, conduct the courses and grant degrees to the students outside their jurisdiction, according to their whims and fancies. It is also not the case of the respondents 10 and 11 that their institutions have been affiliated to the existing Universities in the State of Tamil Nadu.

35. Though the ICFAI University Act,2003 (Act 16 of 2003) provides for having constituent colleges, regional centre and study centres and one of the objectives of the Act is to establish a campus in the State of Uttaranchal and to have study centres at different places in India, such provisions shall be subject to the UGC Regulations as stated above. Admittedly, in this case, none of the said regulations has been complied with by the respondents 10 and 11. Any State legislation which stultifies or sets at naught an enactment validly made by the Parliament would be wholly ultra vires. AICTE Act and UGC Act being subsequent legislations and also special ones in so far as the field of education including technical education, the said Acts will prevail over other enactments wherever there is a conflict. The establishment of unauthorised educational institutions has to be deprecated. Such institutions are known to come up without affording an opportunity to the State to discharge its statutory functions of verifying due compliance with the applicable provisions of law.

36. AICTE is empowered to regulate the technical education system in all the areas wherever it is imparted in India and there cannot be any dichotomy in standards of technical education as it would be against the intention of the legislature in bringing into force of the AICTE Act. AICTE Act, being a subsequent legislation and also a special one so far as the field of technical education is concerned, will prevail over other enactments wherever there is conflict with any other enactments relating to technical education.

37. The grant of degrees fall under the purview of the Universities concerned and also the regulatory purview of the UGC Act. AICTE is empowered to regulate the imparting of technical education in any form by way of tutorial education, collegiate education or university education. For imparting technical education, the norms set out by AICTE are to be followed and AICTE is empowered to make regulations for strict enforcement of said norms and standards and no person, institution or body can impart technical education without the permission of AICTE. When that being the position, the respondents 10 and 11 cannot contend that they do not need the approval of UGC and AICTE for imparting such education throughout the country.

38. As could be seen from the additional affidavit filed by the petitioner, one Murali,R. appeared for the examination for M.B.A.(Regular) course at the centre at Tuticorin for the academic year 2005-2006 and the very same candidate appeared for the examination for the said course at the centre at Nagercoil for the academic year 2006-2007 and he was initially awarded Grade Sheets by ICFAI National College and thereafter, based upon the said Grade Sheets, he was awarded M.B.A.Degree by the ICFAI University, Dehradun. So, the contention of the eleventh respondent that it confers degrees only within the territorial jurisdiction of the State of Uttaranchal and has no study centres, constituent colleges, off-campus centres beyond the territory of the State of Uttaranchal and it is not granting degrees in violation of the UGC Regulations cannot be sustained.

39. That apart, the counter of the tenth respondent clearly shows that ICFAI has established an all

India network of its branch offices at 200 locations and set up around 180 centres for full-time campus based programs and that it conducts exams at over 100 test centres all over India four times a year. It is also stated therein that one of the constituents and centres of excellence of ICFAI is the ICFAI National College (INC), which has more than 150 centres spread around the country. When ICFAI National College is a constituent of tenth respondent and also when the disclosure of INC refers to ICFAI University, Dehradun, for grant of degrees, the said University having been included by the University Grants Commission in the list of universities maintained by the UGC under Section 2 (f) of the UGC Act,1956, we are at a loss to understand how the said University confers degrees at Bachelor, Master and Doctoral levels on the students outside its jurisdiction, as stated in the disclosure, in violation of UGC Regulations particularly Regulation 3.3. It is also not the case of the respondents 10 and 11 that after the development of main campus, in exceptional circumstances, the university has been permitted to open off-campus centres, off-shore campuses and study centres after five years of its coming into existence, on fulfilling the condition that the off-campus centres and the study centres have been set up with the prior approval of UGC and that of the State Government, namely, Tamil Nadu.

40. Regulation 3.3 is categorical that a private university established under a State Act shall operate within the boundary of the State concerned. Also, as per Regulation 3.3.1, no off-campus centres/study centres shall be set up without the prior approval of the UGC and that of the State Governments where the centres are proposed to be opened. In the case on hand, off-campus centres having been set up without the prior approval of the UGC and that of the State Government, namely, Tamil Nadu, they cannot be allowed to run any longer. If such centres are allowed to continue, the future of gullible students will be jeopardised, by way of money and time. Therefore, we have no hesitation to hold that the respondents 10 and 11 have no legal right to run the institutions of this kind in the State of Tamil Nadu and they are hereby restrained from running such institutions.

41. We are of the considered opinion that irregularities and improprieties in using the educational system to the advantage of certain private institutions will give a wrong signal to the field of education and the common man will be in peril if this kind of mushrooming of the private institutions, without recognition, affiliation and proper grant of permission, is allowed. Therefore, we hope that the statutory bodies, such as AICTE, UGC or any other equivalent bodies will take constructive steps to bring in appropriate rules and regulations with stringent penal provisions to scotch all the irregular and illegal institutions.

42. We are conscious of the fact that our decision is likely to affect adversely the students, but, in the interest of curbing the unabated activities of some persons who start unauthorised educational institutions, such a hard and drastic decision has to be taken. We aspire that the Government will also be vigilant enough so as to prevent individuals and institutions from starting unauthorised educational institutions, so that, at least, hereafter, the students will not be trapped or lured into taking admissions in such institutions with the temptation of getting some degrees.
43. Writ Petition stands disposed of accordingly. No costs. It is open to the authorities, namely, respondents 1 to 9 to take appropriate action against respondents 10 and 11 in accordance with law. Consequently, the connected M.P.No.1 of 2006 and 1 of 2008 are closed.

W.P.Nos.17126 TO 17128/2008 :
44. In view of the above order passed in W.P.No.30664 of 2006, these Writ Petitions stand automatically dismissed. No costs. Also, M.P.Nos.1 and 2 of 2008 are dismissed.

dixit

To

1.The Secretary,
University Grants Commission,
Bahadurshah Zafar Marg,
New Delhi-2.

2.The Director,
All India Council for Technical Education,
Shastri Bhavan,
26, Haddows Road,
Chennai-600 034.

3.The Director,
Distance Education Council,
Maidan Garhi,
New Delhi-110 068.

4.The Secretary to Government,
Higher Education Department,
Fort St.George,
Secretariat,
Chennai-600 009.

5.The Director of College Education,
D.P.I.College Road,
Chennai-600 006.

6.The Registrar,
Anna University,
Sardar Patel Road,
Guindy,
Chennai-600 025.

7.The Regional Director,
National Council for Technical Education,
1st Floor, CSD Buildings,
H.M.T.Road,
Bangalore.

8.The Secretary,
Bar Council of India,
21, House Avenue,
Institutional Area,
New Delhi-2.

9.The Secretary to the Visitor,
ICFAI University,
Raj Bhavan,

Uttaranchal,
Dehradun-248 006.

10.Institute of Chartered Financial Analysts of India
(ICFAI) Society,
rep.by its Secretary, Headquarters,
52, Nagarjuna Hills,
Panjagutta, Hyderabad-500 082.

11.The Registrar,
ICFAI University,
C-103, Indira Nagar,
Dehradun-248 006,
Uttaranchal State.

12.The Institute of Chartered Financial Analysts of India
University, Tripura (UT),
having its Headquarters at Jagannath Bai Road,
Bidurhata Chowmuhani,
Agartala, Tripura (West),
Tripura 799 001,
rep.by its Registrar/Authorised Representative
Shri V.R.Shankara.

13.The Member Secretary
All India Council for Technical Education,
7th Floor, Chander Lok Building,
Janpath,
New Delhi 110 001